

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARLEY MARINE SERVICES, INC., a  
Washington corporation; OLYMPIC  
TUG & BARGE, INC., a Washington  
corporation,

Plaintiffs,

v.

FATHOM MARINE, INC., a British Columbia  
corporation,

Defendant.

IN ADMIRALTY

NO. 2:17-CV-856

COMPLAINT FOR MONEY  
DAMAGES AND INJUNCTIVE  
RELIEF

Plaintiffs state and alleges as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1.1 This is an action within the admiralty and maritime jurisdiction of this Court pursuant to 28 U.S.C. §1333 and Federal Rule of Civil Procedure 9(h).

1.2 Plaintiff Olympic Tug & Barge, Inc. (“Olympic”) was, and still is, a corporation organized and existing under the laws of the State of Washington with its principal place of business in Seattle, Washington.

1.3 Plaintiff Harley Marine Services, Inc. (“HMS”) was and still is a corporation organized and existing under the laws of the State of Washington with its principal place of business in Seattle, Washington.

COMPLAINT FOR MONEY DAMAGES  
AND INJUNCTIVE RELIEF - 1

ATTORNEYS AT LAW  
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1.4 HMS is the parent company of Olympic, which is a wholly owned subsidiary. As explained more fully below, at various times relevant to this lawsuit, HMS acted as agent of Olympic and participated in, facilitated, and coordinated the requisition of emergency services on Olympic's behalf. As agent, HMS incurred costs and expenses on behalf of Olympic as a result of Fathom's conduct.

1.5 Upon information and belief, defendant Fathom Marine, Inc. ("Fathom") was, and still is, a corporation formed in Canada and existing under the laws of that country and those of the Province of British Columbia. Its principal place of business is located in North Vancouver, British Columbia, Canada.

1.6 Jurisdiction and Venue are proper under the governing bareboat charter's dispute resolution clauses, with the parties agreeing to submit to the exclusive jurisdiction of the courts located in Seattle, Washington.

## II. FACTS

2.1 The INVESTIGATOR is a 214-foot-long, double-hulled, tank barge. When not on charter to another company, Olympic is the barge's owner *pro hac vice*.

2.2 The INVESTIGATOR is capable of, and at times pertinent to this lawsuit was, transporting petroleum products.

2.3 The INVESTIGATOR is a "dumb" barge, having neither independent propulsion nor crew.

2.4 On or about July 3, 2016, Fathom entered into a standard "BIMCO" bareboat charter with Olympic for the use of the INVESTIGATOR (hereinafter "the Charter"), a true and correct copy of the Charter, with proprietary figures redacted, is attached hereto as "Exhibit A."

2.5 The Charter lists Olympic as the owner of the INVESTIGATOR. The Charter identifies Fathom as the barge's bareboat charterer for purposes of the Charter. The Charter contained, *inter alia*, the following material terms:

1 a. **“2. Charter Period...** The Charter Period shall commen[c]e on the  
2 date indicated in Box 14 [July 5, 2016]... and continue until the Vessel has been redelivered to  
3 the Owners [Olympic] as required by this Charter.”

4 b. **“5. Operation and Use** Charterers [Fathom] shall, at their sole expense,  
5 man fuel, victual, navigate, operate, maintain and supply the Vessel, and pay all charges and  
6 expenses of every kind and nature whatsoever relating to the Vessel, its use and/or operation  
7 during the Charter Period.”

8 c. **“10. Maintenance and Operation...** The Charterers shall maintain the  
9 Vessel... in a good state of repair, in efficient operating condition as it was upon delivery and  
10 otherwise in accordance with good U.S. commercial maintenance practice... The Charterer[']s  
11 responsibility for maintenance shall include all cost and expenses relating to Coast Guard,  
12 American Bureau of Shipping (if applicable)... The Charterers agree to take such measures as are  
13 reasonably necessary and appropriate to prevent exposure of component parts of the Vessel  
14 including bottom and other painting...”

15 d. **11. Hire** (a) The Charterers shall pay hire due to the Owners  
16 punctually in accordance with the terms of this Charter in respect of which time shall be of the  
17 essence. (b) The Charterers shall pay to the Owners for the hire of the Vessel a lump  
18 sum in the amount indicated in Box 22... Hire shall be paid continuously throughout the Charter  
19 Period... (f) Any delay in payment of hire shall entitle the Owners to interest at the rate  
20 per annum as agreed in Box 24. If Box 24 has not been filled in, the three months Interbank  
21 offered rate in London (LIBOR or its successor) for the currency stated in Box 25, as quoted by  
22 the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 percent,  
23 shall apply. (g) Payment of Interest due under sub-clause 11(f) shall be made within seven  
24 (7) running days of the date of the Owners' invoice specifying the amount payable or, in the  
25 absence of an invoice, at the time of the next hire payment date.”  
26

1 e. **“13. Insurance and Repairs** (a) During the Charter Period the  
 2 Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war  
 3 and Protection and Indemnity risks (and any risks against which it is compulsory to insure for the  
 4 operation of the Vessel...)... The Charterers also to remain responsible for and to effect repairs  
 5 and settlement of costs and expenses incurred thereby in respect of all other repairs not covered  
 6 by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in  
 7 the insurances... (g) The Charterers shall indemnify and hold the Owners harmless  
 8 (including legal fees and costs of litigation) of and from any loss, damage, expense, liability,  
 9 claim, or suit resulting from the failure to procure and/or maintain any insurance as required by  
 10 this Contract and/or the failure of any such insurance, including exposure to any loss, damage,  
 11 expense, liability, claim or suit which would have been covered had the insurance been procured  
 12 and maintained as required.”

13 f. **“15. Redelivery** At the expiration of the Charter Period the Vessel  
 14 shall be redelivered by the Charterers to the Owners at a safe and ice-free port or place as  
 15 indicated in Box 16 [Vancouver, British Columbia, Canada], in such ready safe berth as the  
 16 Owners may direct... should the Charterers fail to redeliver the Vessel within the Charter Period,  
 17 the Charterers shall pay the daily equivalent to the rate of hire stated in Box 22 plus 10 percent, or  
 18 to the market rate, whichever is the higher, for the number of days by which the Charter Period is  
 19 exceeded. All other terms, conditions and provisions of this Charter shall continue to apply...  
 20 The Charterers shall be [ ] obligated to redeliver the Vessel in the same good condition, repair and  
 21 working order as upon delivery... with such same good condition, repair a[nd] working order as  
 22 upon delivery defined to exclude ordinary wear and tear occurring to the Vessel during the  
 23 Charter Period... Redelivery shall not occur until the Vessel has been restored to the same good  
 24 condition, repair, and working order, less ordinary wear and tear, as upon delivery has been  
 25 accomplished...”

1                   g.       **“17. Indemnity**     (a)     The Charterers shall indemnify the Owners  
2 against any loss, damage or expense incurred by the Owners arising out of or in relation to the  
3 operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of  
4 an event occurring during the Charter Period.”

5                   h.       **“30. BIMCO Dispute Resolution Clause... Dispute Resolution... (b)**  
6 This Contract shall be governed by and construed in accordance with the General Maritime Law  
7 of the United States, or by the laws of the State of Washington in the event there is no General  
8 Maritime rule of law applicable, and any dispute arising out of or in connection with this Contract  
9 shall be resolved through litigation in the federal or state courts located in Seattle, Washington  
10 with the parties consenting to [its] personal jurisdiction and with the substantially prevailing party  
11 to recover its legal fees and costs of litigation.”

12           2.6     Olympic delivered the INVESTIGATOR at the outset of the Charter, as agreed.

13           2.7     Operating under the Charter, in early September 2016, Fathom towed the  
14 INVESTIGATOR with its tug, FATHOM WAVE, from Vancouver, British Columbia to  
15 Tuktoyaktuk, located in Canada’s Northern Territories.

16           2.8     Tuktoyaktuk is an Inuvialuit hamlet within the Inuvialuit Settlement Region in  
17 Canada. Tuktoyaktuk, and the entire Inuvialuit Settlement Region, borders the Beaufort Sea, a  
18 marginal sea of the Arctic Ocean.

19           2.9     On or about September 2, 2016, Fathom grounded the INVESTIGATOR on a sand  
20 bar just east of Pullen Island, approximately 40 miles northwest of Tuktoyaktuk.

21           2.10    The crew of the FATHOM WAVE disconnected the tug from the  
22 INVESTIGATOR, allowing it to drift in a southeastern direction.

23           2.11    The INVESTIGATOR drifted approximately 37 miles, grounding again at Toker  
24 Point, approximately 14 miles north-northeast of Tuktoyaktuk. The crew of the FATHOM  
25 WAVE failed to reconnect to the barge at any point along its approximate 37-mile drift through  
26 the Beaufort Sea.

1           2.12   Surrounding Toker Point are at least two Inuvialuit burial sites, as well as  
2 Inuvialuit hunting, fishing, and trapping areas, as well as Inuvialuit historical and cultural sites.

3           2.13   The area surrounding Toker Point is also a sensitive waterfowl habitat.

4           2.14   The grounding of the INVESTIGATOR—a tank barge loaded with petroleum  
5 product—by Fathom posed a serious, immediate threat to both the pristine natural conditions of  
6 Toker Point, the Inuvialuit Settlement Region, and the cultural landmarks of the Inuvialuit people.

7           2.15   Fathom’s attorneys remarked subsequently, in Fathom’s application for an  
8 immediate Coastwise Trading License, that “[t]he circumstances surrounding the grounding of the  
9 Investigator and the heavy weather conditions in the region which has hampered refloating  
10 operations, as well as the impending close of the arctic season, has created a situation of urgency  
11 in which the normal delays of notification cannot be respected[.]”

12          2.16   Despite the immediacy of the danger posed by Fathom’s grounding of the  
13 INVESTIGATOR, upon current information and belief, no notice of the event or grounding was  
14 given to Olympic or HMS until the following day, September 3, 2016.

15          2.17   Fathom informed Olympic/HMS on September 3 that while weather hampered  
16 initial retrieval efforts, the INVESTIGATOR should be recovered in short order and safely  
17 moored in Tuktoyaktuk harbor, likely by the evening of September 6.

18          2.18   The INVESTIGATOR was not in Tuktoyaktuk harbor that evening; nor the next  
19 evening; nor the next.

20          2.19   In its September 8, 2016 “Preliminary Salvage Plan”—developed by Fathom and  
21 its surveyor, Marc McAllister, and sent to the Canadian Coast Guard (“CCG”)—Fathom  
22 represented that the INVESTIGATOR was filled with 20 metric tons of diesel in its #4 port and  
23 starboard tanks. Twenty metric tons is approximately 6,265 gallons of diesel.

24          2.20   Fathom’s sole “plan” as set forth in its Preliminary Salvage Plan involved using  
25 the “prop wash” (Stage 1 of Fathom’s plan) from a towing vessel to remove sand and sediment  
26 surrounding the INVESTIGATOR.

1           2.21    An attorney for Fathom’s insurance company later confirmed in writing that  
2 Fathom’s “prop wash” solution was entirely infeasible, as it was dependent on unavailable  
3 Canadian vessels. (Surveyor McAllister later proposed a second option of using a truckable  
4 suction dredge to remove sand from beneath the barge—also confirmed by counsel as infeasible  
5 due to the unavailability of the suction dredge.)

6           2.22    No plan was formulated by Fathom beyond the infeasible “prop wash” solution to  
7 free and recover the barge.

8           2.23    “Stage 2” of Fathom’s “plan” was merely that Fathom would draft a “Stage 2”  
9 plan if Stage 1 (“prop wash”) failed.

10          2.24    “Stage 3” of Fathom’s “plan” was strikingly brazen: “winter-in” the  
11 INVESTIGATOR—that is, leave it where it was to be consumed by ice from the Canadian Arctic  
12 and risk environmental cataclysm.

13          2.25    Fathom revised its initial Salvage Plan on September 9, 2016. In its September 9,  
14 2016 “Revision 1” to its Salvage Plan, Fathom acknowledged that “[a]ll non-ice strengthened  
15 vessels are to be clear [of] the zone by October 20th.” (Fathom again represented in “Revision 1”  
16 of their Salvage Plan that the barge was filled with 20 metric tons or 6,265 gallons of diesel fuel.)

17          2.26    In sum, Fathom had no meaningful plan to recover the INVESTIGATOR, and was  
18 aware that the window for recovery of the barge was closing quickly. According to Fathom, by  
19 October 20, arctic ice would make the area where Fathom had grounded the INVESTIGATOR  
20 inaccessible to all but “ice-classed” vessels.

21          2.27    Ice, which moves throughout the Canadian Arctic, posed an ongoing threat of  
22 which Fathom was expressly aware. Ice could shift the barge to an unknown location, dislodge it,  
23 set it adrift, or, worse, crush or puncture the vessel, spilling its payload of petroleum products into  
24 the surrounding pristine environment.

25          2.28    Despite the immediate risk posed by the grounding of the INVESTIGATOR, and  
26 despite the risk posed by the imminent freezing of the area, Fathom’s September 9 “Revision 1”

1 to its Salvage Plan prioritized “lightering” (i.e. removal of petroleum products from the barge)  
2 and “winterizing” the INVESTIGATOR to leave it where it was over removal.

3       2.29 In its “Decision Making Timeline,” Fathom provided for only two days of “prop  
4 washing” sand (September 14 and 15) before its focus shifted to “winterizing” the  
5 INVESTIGATOR.

6       2.30 As Fathom was aware, “lightering” the INVESTIGATOR for winter would not  
7 remove all of the petroleum product, as even when “empty,” the barge’s tanks will remain coated  
8 with substantial quantities of petroleum product, still capable of diffusing into the surrounding  
9 environment.

10       2.31 Despite the alleged commitment to lighter the barge, the only lightering plan  
11 Fathom ever proposed that was capable of implementation was the fanciful suggestion to use a  
12 helicopter to collect the barge’s fuel in totes and fly it off the barge.

13       2.32 As part of its lightering plan, Fathom failed to make preparations for basic safety  
14 precautions, such as gas freeing the INVESTIGATOR’s tanks. Furthermore, Fathom had  
15 misrepresented the quantity of diesel onboard the INVESTIGATOR. The barge was carrying  
16 closer to 13,894 gallons of diesel, as opposed to the 6,265 gallons initially reported.

17       2.33 Moreover, Fathom also represented to the CCG in its “Revision 1” to its Salvage  
18 Plan that “there is very little surplus of equipment available” to partake in actually removing the  
19 INVESTIGATOR (as opposed to “winterizing” it) from its current position.

20       2.34 Communications from Fathom to Olympic with regard to the INVESTIGATOR’S  
21 status between September 6 and the following week and a half were, effectively, non-existent.

22       2.35 Instead, while the INVESTIGATOR was stranded at Toker Point, Fathom focused  
23 its communications with Olympic and HMS on proposals for purchasing the INVESTIGATOR.

24       2.36 Through Olympic and HMS’ customers and other various channels, on or about  
25 September 16, Olympic and HMS learned that the INVESTIGATOR was still grounded and little,  
26 if any efforts, had been expended by Fathom to recover the barge.



1           2.37   Olympic, HMS, and the Harley family of companies pride themselves on their  
2 commitment to safety, community, and environmental responsibility. Having the  
3 INVESTIGATOR, an Olympic barge, with Olympic colors, carrying petroleum product grounded  
4 in the Inuvialuit Settlement Region, in a pristine wildlife habitat—and, to learn of its continued  
5 grounding from its customers, rather than Fathom—was simply not acceptable.

6           2.38   It was not until September 16 that Olympic/HMS was provided Fathom’s  
7 “Revision 1” Salvage Plan.

8           2.39   Upon learning the INVESTIGATOR was still grounded, Olympic/HMS  
9 immediately mobilized personnel to attend the barge and assess the ongoing situation.

10          2.40   Despite knowing its plan was entirely infeasible, Fathom reassured Olympic and  
11 HMS on September 19 that Fathom’s prop-washing plan was likely to free the barge in the next  
12 few days. Fathom also reassured Olympic and HMS that Fathom would complete lightering  
13 operations by October 2.

14          2.41   With no progress made by Fathom in freeing the INVESTIGATOR, Olympic and  
15 HMS personnel reached out to Fathom and Olympic’s joint insurance underwriters, indicating  
16 Olympic/HMS’ frustrations with the non-progress of the recovery of the INVESTIGATOR.

17          2.42   Olympic and HMS personnel were rebuffed, with the hull underwriters indicating  
18 they would not communicate with Olympic—their own insured—due to concerns over  
19 “confidentiality.”

20          2.43   Frustrated by Fathom’s non-action and the bad faith behavior of its insurers, on  
21 September 26, Olympic and HMS demanded SMIT—an experienced salvage and vessel-recovery  
22 company—be named as salvage master to ensure immediate recovery of the INVESTIGATOR.

23          2.44   Fathom’s underwriters refused, and Fathom did not press its insurers. Ultimately,  
24 SMIT was not permitted to participate in the recovery effort.

25          2.45   Olympic and HMS repeated concerns about the consequences of “a failed salvage”  
26 of the INVESTIGATOR to Fathom and its underwriters on multiple occasions.

1           2.46   Olympic and HMS expressed, in no uncertain terms, to Fathom and its  
2 underwriters, that Olympic/HMS suspected they were colluding to simply leave the  
3 INVESTIGATOR grounded on the beach.

4           2.47   Olympic and HMS advanced their own plan to both Fathom and its underwriters to  
5 use airbags and available equipment to refloat the INVESTIGATOR while pulling it off the  
6 beach. Olympic and HMS' plan was time-tested and had been used previously in the Arctic to  
7 refloat barges.

8           2.48   Contrary to Fathom's representations that there was no meaningful available  
9 equipment to participate in recovering the INVESTIGATOR, Olympic and HMS immediately  
10 located recovery assets, including marine equipment operated by Bowhead Transport, Cruz  
11 Marine, Crowley, and others to participate in the recovery effort.

12          2.49   Among this equipment was the Bowhead-operated, triple-screw, shallow-water  
13 vessel UNALAQ, various tugboats (including HMS' own equipment), 100-ton winches which  
14 could be mounted on a variety of vessels to participate in pulling the INVESTIGATOR off the  
15 beach, as well as airbags which could be placed under the barge to reduce sand suction and aid in  
16 the recovery effort.

17          2.50   Olympic and HMS' plan to minimize any losses to the barge and surrounding  
18 environment was not only the "right thing to do" for the surrounding community and  
19 environment, it was also fully consistent with its duty to sue and labor under its insurance policies  
20 to reduce potential losses to its underwriters.

21          2.51   On September 29, 2016, Olympic/HMS expressly advised Fathom, in writing, that  
22 its salvage attempts to date had been an utter failure, time was being wasted, and its fanciful plan  
23 for helicopter lighterage was both foolhardy and dangerous.

24          2.52   Fathom knew that the highest tide in the area was set for October 2, 2016. After  
25 that time, decreasing water levels would necessarily make it more difficult to refloat and recover  
26 the INVESTIGATOR.

1           2.53   On October 1, 2016, Olympic/HMS again expressly requested involvement in  
2 recovery of the barge. They also expressly requested immediate funding from Olympic and  
3 Fathom's mutual underwriters so Olympic/HMS could mobilize equipment. These requests were  
4 denied.

5           2.54   From late September, until October 6, 2016, Fathom repeatedly insisted to  
6 Transportation Canada and the CCG that Fathom's focus should be helicopter lightering of the  
7 barge and winterizing same, rather than refloating and recovery of the barge.

8           2.55   On September 30, 2016, Fathom went so far as to misrepresent in writing to  
9 Transportation Canada and the CCG that Olympic and HMS had made no specific offer of  
10 assistance to Fathom. (Fathom subsequently insisted that both agencies cut off all communication  
11 with Olympic and HMS.)

12          2.56   Fathom's ineptness and conceit resulted in Olympic/HMS being unable to  
13 mobilize in time to utilize the season's highest tides on October 2 to refloat and recover the  
14 INVESTIGATOR.

15          2.57   As expected, and as Olympic/HMS expressly warned, Fathom's attempt to lighter  
16 the INVESTIGATOR with helicopters was an utter failure. On or about October 6, upon  
17 information and belief, Fathom was able to remove approximately one small "tote" worth of  
18 petroleum product before Fathom's helicopter was forced to retire. At no time was Fathom able  
19 to remove any meaningful quantity of diesel from the INVESTIGATOR with its helicopter  
20 lightering program.

21          2.58   Following the failed helicopter lightering, CCG issued a Direction Order on  
22 October 6, 2016, more than 30 days after the casualty first occurred. The Direction Order stated  
23 as follows: "FATHOM Marine shall undertake refloating operation of the barge  
24 INVESTIGATOR. HARLEY MARINE SERVICES shall assist FATHOM MARINE in its  
25 attempt to refloat the barge INVESTIGATOR."  
26

1           2.59   With a clear directive from the Canadian government, Olympic and HMS  
2 immediately mobilized all available resources to attempt to recover the INVESTIGATOR.

3           2.60   Despite this, Fathom continued to interfere with recovery of the barge.

4           2.61   Upon information and belief, Fathom would not mobilize available heavy  
5 equipment to participate in the refloating of the INVESTIGATOR, while it simultaneously  
6 interfered with Olympic and HMS renting the equipment directly.

7           2.62   Fathom refused to confirm even the availability of heavy equipment at its disposal  
8 that could be used to assist Olympic and HMS to refloat and recover the INVESTIGATOR.

9           2.63   Due to Fathom's delays, work on refloating the barge with airbags did not begin in  
10 earnest until October 10, when Fathom finally delivered to Olympic and HMS the first airbag to  
11 refloat the barge.

12          2.64   Despite Fathom's behavior, five airbags were eventually placed under the barge,  
13 and progress was made towards refloating it.

14          2.65   However, on October 16, 2016, the CCG terminated all recovery operations due to  
15 increasing ice and hazardous weather. As predicted, seasonal ice had arrived in the area, making  
16 continued operations too hazardous to continue. The cessation of work due to the arrival of  
17 seasonal ice was the precise thing Olympic and HMS had warned of since mid-September.

18          2.66   Olympic and HMS could have fully refloated the barge with an additional 48 hours  
19 of time to work.

20          2.67   The INVESTIGATOR remains grounded in the Canadian Arctic.

21          2.68   Fathom's ineptness, conceit, and obstruction, above described, were the direct  
22 causes of Olympic and HMS' inability to refloat and recover the INVESTIGATOR.

23          2.69   It was later discovered that Fathom entered into an undisclosed agreement with it  
24 and Olympic's mutual insurers which favored Fathom's financial assets over those of Olympic  
25 and HMS. Fathom has received over \$500,000 in improper payments, while Olympic and HMS  
26 received nothing.

1           2.70   Simultaneously, Fathom and its underwriters denied information to Olympic.  
2 Indeed, until March of this year—when Olympic’s underwriters sued Olympic in Canada—  
3 Olympic and Fathom’s joint underwriters refused even to provide Olympic with a copy of the  
4 insurance policies on which Olympic was a named insured.

5           2.71   Fathom’s actions held the INVESTIGATOR hostage while threatening petroleum  
6 discharge into Inuvialuit territory, onto culturally significant locations, and into the surrounding  
7 pristine environment. Fathom’s actions were performed for the apparent purpose of permitting  
8 Fathom to reap the benefits of its inept “recovery efforts” while simultaneously using the  
9 INVESTIGATOR’s precarious position and threat to the environment to negotiate a better  
10 purchase price from Olympic and HMS.

11           2.72   Approximately two weeks after the CCG discontinued recovery operations,  
12 Fathom contacted Olympic wishing to discuss “completing” the purchase of the  
13 INVESTIGATOR, despite Olympic’s September 29, 2016 writing in which it rescinded all offers  
14 of sale.

15           2.73   Fathom’s behavior in grounding the barge, failing to recover it, withholding  
16 information, preventing Olympic from refloating and recovering the barge, while threatening the  
17 local stakeholders and the natural environment with a petroleum spill was reckless, willful, and  
18 wanton.

19           2.74   Total costs associated with Olympic/HMS’ efforts to refloat and recover the  
20 INVESTIGATOR are in excess of \$4,300,000, and include costs of personnel and chartering of  
21 equipment used in the recovery effort.

22           2.75   Olympic’s joint insurance carriers have failed, at present, to pay any of  
23 Olympic/HMS’ costs associated with recovering the INVESTIGATOR.

24           2.76   Fathom has ceased paying charter hire to Olympic despite the barge never having  
25 been redelivered to Olympic under the terms of the governing Charter. Hire continues to accrue.  
26 Currently owed hire is in excess of \$300,000.

6           2.79   Olympic and HMS has incurred, and continues to incur, substantial administrative  
7 costs, personnel costs, attorney's fees, and additional expenses.

## BREACH OF CONTRACT

3.2 Fathom breached the governing Charter in numerous respects, including, but not limited to, the following:

- 13 a. Failing to redeliver the INVESTIGATOR as required by the Charter,  
14 including redelivering the INVESTIGATOR to Vancouver, British  
15 Columbia, Canada;
- 16 b. Failing to pay all charges and expenses of every kind and nature  
17 whatsoever relating to the INVESTIGATOR, its use and/or operation  
18 during the Charter Period;
- 19 c. Failing to maintain the INVESTIGATOR in a good state of repair, in  
20 efficient operating condition as it was upon delivery and otherwise in  
21 accordance with good U.S. commercial maintenance practice;
- 22 d. Failing to pay all costs and expenses relating to the Coast Guard;
- 23 e. Failing to take all reasonably necessary measures to prevent exposure of  
24 component parts of the INVESTIGATOR, including its bottom and  
25 painting;
- 26 f. Failing to pay all hire due under the terms of the Charter;

- 1                   g.       Failing to indemnify and hold Olympic harmless from those costs and  
2                               expenses due upon the “failure of insurance;”
- 3                   e.       Failing to indemnify Olympic against any loss, damage or expense incurred  
4                               by Olympic arising out of or in relation to the operation of the  
5                               INVESTIGATOR by Fathom.

6           3.3       Fathom’s breach of the Charter has damaged Olympic and HMS in an amount to  
7 be determined at trial, but, at present, not less than \$4,600,000.

8                               **IV. SECOND CAUSE OF ACTION**

9                               **ATTORNEYS’ FEES AND COSTS**

10          4.1       Plaintiffs hereby incorporate the above-stated allegations.

11          4.2       The Charter provides that Fathom is to indemnify and hold Olympic harmless  
12 (including legal fees and costs of litigation) of and from any loss, damage, expense, liability,  
13 claim, or suit resulting from the failure of any of the insurances Fathom was to maintain.

14          4.3       The Charter provides that Fathom is to indemnify Olympic against any loss,  
15 damage or expense incurred by Olympic arising out of or in relation to the operation of the  
16 INVESTIGATOR by Fathom.

17          4.4       The Charter provides further that the substantially prevailing party to any lawsuit  
18 related to the Charter is entitled to its attorney’s fees and costs.

19          4.5       Olympic is entitled to said remedies as a party to the Agreement in an amount to  
20 be proven at trial.

21                               **V. THIRD CAUSE OF ACTION**

22                               **BREACH OF THE WARRANTY OF WORKMANLIKE PERFORMANCE**

23          5.1       Plaintiffs hereby incorporate the above-stated allegations.

24          5.2       The warranty of workmanlike performance is implied in every maritime contract.

25          5.3       Fathom owed Olympic an implied warranty to plaintiffs that it would perform the  
26 Charter in a workmanlike manner.

1           5.4     Fathom breached the implied warranty of workmanlike performance by failing to  
2 perform the Charter with the degree of care, skill, attention, and diligence necessary.

3           5.5     Fathom also breached the warranty of workmanlike performance by failing to  
4 assign appropriately skilled and/or trained employees to perform the Charter as agreed and  
5 safeguard and recover the INVESTIGATOR.

6           5.6     As a result of Fathom's failure to perform the work in a workmanlike manner,  
7 Olympic and HMS sustained damages in an amount to be determined at trial, but not less than  
8 \$4,600,000.

9                                   **VI. FOURTH CAUSE OF ACTION**

10                   **BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING**

11           6.1     Plaintiffs hereby incorporate the above-stated allegations.

12           6.2     The duty of good faith is implied in every maritime contract.

13           6.3     Fathom owed Olympic a duty of good faith that included, without limitation, a  
14 guaranty against arbitrary and unreasonable conduct and a warranty against any action having the  
15 effect of destroying or injuring the right of Olympic to receive the full benefits of its Charter with  
16 Fathom and the asset contracted for therein.

17           6.4     Fathom breached its implied duty of good faith by acting arbitrarily and  
18 capriciously in safeguarding and failing to redeliver the INVESTIGATOR as required in the  
19 Charter.

20           6.5     As a direct, foreseeable and proximate result of Fathom's breach of the implied  
21 warranty of good faith, Olympic and HMS have suffered damages in an amount to be proved at  
22 trial, including without limitation costs related to attempts to safeguard and recover the  
23 INVESTIGATOR and other consequential loss resulting from Fathom's willful and dilatory  
24 refusal to honor its contractual obligations. The full extent of Olympic and HMS' damages will be  
25 proven at trial, but exceed \$4,600,000.



**VII. FIFTH CAUSE OF ACTION**

**PROMISSORY ESTOPPEL**

7.1 Plaintiffs hereby incorporate the above-stated allegations.

7.2 Fathom assured Olympic/HMS on numerous occasions that the recovery of the INVESTIGATOR was imminent, and subsequently discouraged and obstructed Olympic/HMS from becoming meaningfully involved in recovery of the INVESTIGATOR as discussed above.

7.3 The foregoing statements and actions by Fathom constitute promises that Fathom should have reasonably expected to induce definite and substantial forbearance on the part of Olympic/HMS with regard to the recovery effort of the INVESTIGATOR.

7.4 Fathom's promises induced such reasonable forbearance by Olympic/HMS.

7.5 As a direct, foreseeable and proximate cause of the promises made by Fathom, Olympic and HMS have suffered damages in an amount to be proved at trial, but not less than \$4,600,000 resulting from Fathom's failure to honor its promises.

**VIII. SIXTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

8.1 Plaintiffs hereby incorporate the above-stated allegations.

8.2 As a result of its failure to perform, as agreed, Fathom has been unjustly enriched at Olympic's expense and is therefore indebted to Olympic for all amounts owing for charter hire, past and future, as well as those costs associated with failure to redeliver the INVESTIGATOR, and costs associated with drydocking and repairing the barge, in an amount to be proven at trial.

**IX. SEVENTH CAUSE OF ACTION**

**NEGLIGENCE**

9.1 Plaintiffs hereby incorporate the above-stated allegations.

9.2 Fathom, as operator of the INVESTIGATOR had a duty to operate the barge with reasonable degree of care, as provided for under general maritime law.

3           9.4       Fathom's breach was the proximate cause of the actual grounding of the barge, the  
4       impending perils still facing the barge, as well as the CCG's October 6, 2016 Direction Order,  
5       both of which required Olympic to act to attempt to refloat the barge.

6            9.5      As a proximate cause of Fathom's negligence, Olympic has been damaged in an  
7 amount to be proven at trial, but not less than \$4,600,000.

8           9.6       As a proximate cause of Fathom’s negligence, its interference with Olympic’s  
9 recovery of the INVESTIGATOR, and the ongoing grounding of the barge near an Inuvialuit  
10 settlement, culturally important Inuvialuit sites, and in a wildlife sanctuary has done irreparable  
11 harm to Olympic’s reputation for safety and environmental stewardship in an amount to be  
12 determined at trial.

## X. EIGHTH CAUSE OF ACTION

## BAILMENT

15            10.1    Plaintiffs hereby incorporate the above-stated allegations.

16           10.2   At the time of the grounding, the INVESTIGATOR was in the sole possession and  
17 control of Fathom.

18           10.3   The INVESTIGATOR had been delivered to Fathom under the terms of the  
19 Charter.

10.4 Fathom was obligated to redeliver the INVESTIGATOR in at least the same good  
order and condition as delivered.

22 10.5 Fathom failed to redeliver the INVESTIGATOR in good order, and, in fact,  
23 redelivered it in a damaged condition.

10.6 Because Fathom breached its duty as bailee, Olympic and HMS were caused to suffer damages in an amount to be determined at trial, but not less than \$4,600,000, plus prejudgment interest and costs.

**XI. NINTH CAUSE OF ACTION**

**REMOVAL AND REDELIVERY OF THE INVESTIGATOR**

**BY WAY OF MANDATORY INJUNCTION**

11.1 Plaintiffs hereby incorporate the above-stated allegations.

11.2 Under the governing Charter, Fathom has a duty to redeliver the INVESTIGATOR as required by the Charter, including redelivering the INVESTIGATOR to Vancouver, British Columbia, Canada.

11.3 Stemming from that contractual obligation, Olympic also enjoys certain equitable rights, including the right to have the INVESTIGATOR so redelivered.

11.4 There is a substantial likelihood of success by Olympic on the merits of its lawsuit; to wit, Fathom's grounding of the INVESTIGATOR, failure to redeliver it, failure to pay charter hire, failure to secure adequate insurance, and failure to indemnify and hold Olympic harmless are clear breaches of the Charter.

11.5 Irreparable injury will be suffered if the INVESTIGATOR is not removed from its present position, including potential petroleum discharge into the surrounding environment, sanction by the CCG, and ongoing damage to Olympic's business reputation.

11.6 Harm both to Olympic and the surrounding environment clearly outweigh any burden to Fathom in redelivering the barge—performance Fathom was required to render under the terms of the Charter and per the Direction Orders of the CCG.

11.7 Requiring Fathom to redeliver the barge will plainly serve the public interest by removing a threat to the pristine environment surrounding Toker Point and the Inuvialuit population residing nearby.

11.8 Accordingly, Olympic requests a mandatory injunction issue requiring Fathom to remove the INVESTIGATOR and redeliver it to Vancouver, British Columbia, Canada, per the terms of the governing Charter, as well as perform all of the other obligations which it assumed pursuant to the Charter.

**XII. PUNITIVE DAMAGES**

12.1 Plaintiffs hereby incorporate the above-stated allegations.

12.2 Fathom's ineptness, conceit, obstruction, and otherwise unconscionable behavior includes, but is not limited to the following: holding Olympic's barge hostage; willfully delaying the recovery of that barge; risking a petroleum spill in an Inuvialuit settlement and a wildlife sanctuary; engaging in the foregoing for the purpose of seeking monetary gain from Olympic's own underwriters (to Olympic and HMS' detriment); engaging in the foregoing for the purpose of negotiating a better purchase price for the INVESTIGATOR.

12.3 Fathom's actions constitute reckless, willful, and wanton behavior entitling Olympic and HMS to punitive damages against Fathom.

12.4 Olympic and HMS hereby request \$5,000,000 in additional punitive damages against Fathom for its reckless, willful, and wanton conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Olympic Tug & Barge, Inc. and Harley Marine Services, Inc. pray:

1. That the Court award judgment in favor of Olympic and against Fathom on Olympic's causes of action, in an amount to be proven at trial, but not less than \$4,600,000;
2. Punitive damages against Fathom in the amount of \$5,000,000;
3. That the Court award judgment in favor of Olympic against Fathom for all fees and costs, including attorneys' fees, called for under the Charter and allowed by applicable law;
4. That plaintiff be awarded pre-judgment interest on the unpaid charter hire at the rate called for in the Charter, and otherwise be awarded pre- and post-judgment interest and costs as allowed by law;
5. That the Court issue a mandatory injunction against Fathom requiring it to remove the INVESTIGATOR and redeliver it to Vancouver, British Columbia, Canada, as well as perform all of the other obligations which it assumed pursuant to the Charter;
6. For such other and further relief as the Court deems just and proper.

1 DATED this Friday, June 02, 2017.

2 BAUER MOYNIHAN & JOHNSON LLP

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5 s/Mark Krisher

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